IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 33341 of 2006(T)

PETITIONER:

CONFEDARATION OF PRIVATE STUDY SCHOOLS ASSOCIATION, A SOCIETY REGISTERED UNDER THE TRAVANCORE COCHIN LITERARY,SCIENTIFIC & CHARITABLE SOCIETIES REGISTRATION ACT,HAVING ITS OFFICE AT GOKULAM,ARUVIKKARAKONAM, AYIROOPPARA P.O.,THIRUVANANTHAPURAM,REPRESENTED BY ITS SECRETARY, PROF. VATTIYOORKAVU RAMACHANDRAN NAIR.

BY ADV. SRI.V.GIRI

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION (G) DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.A.J. VARGHESE
BY ADVOCATE GENERAL SRI. C.P.SUDHAKARA PRASAD
BY ADV. SRI.S.RAMESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/03/2007 ALONG WITH WPC NO. 1678 OF 2007 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF LIST OF MEMBERS OF THE CONFEDERATION.**
EXT.P2:	**COPY OF THE SAID ORDER NO.G.O.(RT) 4581/97 G.EDN. DTD. 30/12/97.**
EXT.P3:	**COPY OF G.O.(RT) 82/98 DTD. 6/01/98.**
EXT.P4:	**COPY OF THE SAID ORDER PASSED BY THE SUPREME COURT DTD. 27/11/2000 IN SLP NO.5657-5658/2000.**
EXT.P5:	**COPY OF G.O.(RT) 685/01 DTD. 17/02/01.**
EXT.P6:	**COPY OF ORDER DTD. 13/09/2001 IN SLP (CIVIL) NO. 5657-5658/2000 OF THE SUPREME COURT.**
EXT.P7;	**COPY OF G.O.(MS) 358/01 DTD.11/12/2001.**
EXT.P8;	**COPY OF THE GOVERNMENT ORDER DTD. 9/12/2002.**
EXT.P9:	**COPY OF THE G.O.(RT) 114/04 DTD. 7/01/04.**
EXT.P10:	**COPY OF G.O.(RT) NO.679/04 DTD. 12/02/04.**
EXT.P11:	**COPY OF THE JUDGMENT DTD. 4/03/2004 IN WP(C) 1264/04 OF THIS HON'BLE COURT.**
EXT.P12:	**COPY OF G.O.(RT) NO.4642/2004 DTD. 27/10/2004.**
EXT.P13:	**COPY OF THE GOVT. ORDER DTD. 25/01/2005.**
EXT.P14:	**COPY OF ORDER DTD. 12/01/2006 OF THE GOVERNMENT.**
EXT.P15:	**COPY OF THE GOVERNMENT ORDER DTD. 8/02/2006.**
EXT.P16:	**COPY OF THE G.O.(RT) NO.4589/06 DTD.20/10/2006.**

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1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF THE GOVERNMENT ORDER NO.G.O.(P) 256/02/G.EDN. DTD. 31/08/02.

EXT.R1(B): COPY OF G.O.(P) NO.53/2004/G.EDN. DTD. 04/02/2004.

EXT.R1(C): COPY OF G.O.(P) NO.254/2004/G.EDN. DTD.06/08/2004.

EXT.R1(D): COPY OF G.O.(MS) NO.295/2004/G.EDN. DTD. 17/09/2004.

EXT.R1(E): COPY OF G.O.(RT) NO.4656/2004/G.EDN. DTD. 27/10/2004.

EXT.R1(G): COPY OF THE G.O.(MS) NO.14/2007/GEN.EDUCATION DTD. 23/01/2007.

EXT.R1(H): COPY OF THE CIRCULAR NUMBER QIP 35358/02/DPI DTD. 11/10/2002.

EXT.R1(I): COPY OF THE PROMOTION RECORD OF PUPILS FOR THE ACADEMIC YEAR 2005-06 FOR THE STANDARDS FROM 1 TO 4.

EXT.R1(J): COPY OF THE PROMOTION RECORD OF PUPILS, FOR THE ACADEMIC YEAR 2005-06 FOR THE STANDARDS 5 TO 9.

/TRUE COPY/

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K.M.JOSEPH, J.

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WP.(C) Nos.33341, 31860, 32487/2006 &
1678, 3045, 6181, 6290, 6310, & 6361/07.

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Dated this the 6th day of March, 2007

JUDGMENT

Common questions arise in these writ petitions and they are being disposed of by a common judgment.

2. Petitioners are Associations of Private Unrecognised Unaided Schools and Private Unrecognised Unaided School Managers. They are running Schools apparently without any recognition. The challenge relates to the Government Order dated 20.10.2006, which is produced as Ext.P16 in W.P.(C) 33341 of 2006, which I shall take as the main case. Clause 3 provides that students studying in unrecognised Schools upto 6th standard are permitted to take examination in any Government or Aided School and if successful in the examination they can continue their next higher class in Government/Aided/Recognised unaided Schools as per the provisions of the KER. This clause is taken exception to essentially on the ground that for the past several years Government has been issuing orders permitting the Unrecognised/Unaided Schools to conduct examinations

in the Schools provided the Deputy Director is satisfied that the School satisfies the requirements in the order dated 11.12.2001, which is produced as Ext.P7 in the writ petition. They complain that without any basis and without any change in circumstances this benefit, which the Schools have been enjoying for a long number of years was taken away. It is complained of that Ext.P16 order is arbitrary. There is no reference to the earlier orders, it is submitted. It is submitted on behalf of the petitioners that the students studying in the Schools will be put to grave injury. It is contended that the students in the Schools are being taught hybrid syllabus, the elements of which are drawn from State Syllabus, CBSE and ICSE. Therefore calling upon the students to attend the examination and to pass an examination in an aided School, which follows the State Syllabus will reach grave injustice to the students. The impugned order is passed on 20.10.2006 virtually in the middle of the year, it is pointed out.

3. The case of the Government as revealed from the counter affidavit and additional counter affidavit is that the grading system has been introduced in the State. They would contend that in fact grading

system was made applicable to 10th standard in the year 2005. Prior to that the grading system was introduced in the other standards in the previous years itself. It is stated that the impugned clause essentially is a concession to the students. It is pointed out with reference to Ext.R4 (e) and Ext.R4(f) that the matter was made unambiguously clear that the concession would not be continued beyond the dates mentioned therein. No doubt, learned Advocate General, who appears on behalf of the State points out that there was a relaxation as evident from Ext.P14. But he points out that it is clear from Ext.P14 that it is limited to the year 2005-2006. No doubt counsel for the petitioners would point out that Ext.P15 dated 8.2.2006 reiterates that Ext.P12 order dated 27.10.2004 is a standing order and as far as classes 1 to 6 are concerned the old arrangement could be continued. But the facility of allowing examinations to be held on the basis of the permission of the Deputy Director was limited to the 6th standard. It is also pointed out by the learned counsel for the petitioners that grading system involves the element of continuous evaluation and that the students are by the impugned clause being asked only to take the annual examination,

which is only a part of the grading system even if it is taken as introduced. No doubt learned Advocate General immediately points out that by the impugned clause Government must be treated as only having insisted with the students securing the pass mark in the written annual examination and that the students are not really put to any difficulty.

4. Learned counsel for the petitioners points out that at any rate calling upon the students to comply with the condition in the Government Order may produce various unjust results. They submitted that they would not raise a claim of the nature projected in these writ petitions from the coming year onwards.

5. Learned Advocate General sought time and took instructions in the matter. On receiving instructions, learned Advocate General submitted that Government is not averse to extend the benefit of petitioners' schools being allowed to conduct examinations as in the previous year on the basis of the orders issued by the concerned Deputy Director of Education upto 6th standard and to issue TC for this year. But he would contend that petitioners must undertake that in their

schools the provisions of KER will apply with full vigour from the next year onwards.

6. A petition to accept an affidavit has been filed in W.P.(C) 33341 of 2006 as I.A. 3547 of 2007 , wherein it is stated as follows:

> "Chapter VI of KER recognises private study upto Standard V. As in Ext.P16 Government Order students studying upto Standard VI in unrecognised unaided schools can be permitted to pursue further studies in any Government or other recognised Schools provided pupils give their exams in any Government or aided school. It is submitted that the pupils from the schools which are members of petitioners association are being imparted instructions under a syllabus which is different from the State Syllabus. Therefore the students will not be in a position to give their annual exams under a syllabus which is conducted by the State Board.
>
> It is submitted that therefore, for the current academic year 2006-2007 permission may be granted to all the members of petitioner Federation to conduct annual exams for the students in their respective schools upto and inclusive of standards VI, and issue a transfer certificate to interested students to pursue further studies in a school of their choice from the next academic year onwards namely

> 2007-08 onwards. I, as office bearer of the Federation, and, as authorised by other schools which are members of petitioner federation, undertake that private study in the schools of the petitioner federation will be confined upto and inclusive of standard V from the next academic year 2007-2008 and from the next academic year, the institutions which are members of petitioners federation will enable students from their schools to pursue their studies in Government/aided/recognised institutions from Standard VI onwards. The instant affidavit may be accepted and appropriate orders may be passed in this regard. The accompanying application is filed for the said purpose. In the interest of justice it is to be allowed."

7. As far as the other cases are concerned, learned counsel appearing on behalf of the respective petitioners adopted the stand taken by the petitioner in W.P.(C) 33341 of 2006 in the aforesaid affidavit. In the light of the stand taken by the parties as aforesaid before me, the writ petitions will stand disposed of as follows:

If the writ petitioners or members of the writ petitioners' associations make applications for allowing the examinations to be conducted upto 6th standard in their own schools and for permission to

issue TC, the concerned Deputy Director of Education will pass appropriate orders in the light of Ext.P7 Government Order dated 11.12.2001 within a period of one week from the date of receipt of the applications. Subject to the direction based on the concession of the Advocate General, the impugned Clause is upheld. I make it clear that the stand taken on behalf of the petitioners shall not stand in the way of the claims of the petitioners or members of petitioners' association for recognition being dealt with in accordance with law.

The writ petitions are disposed of as above.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.